

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2294 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

HEIRS OF RAMSHANKER SURVE

Versus

COMPETENT AUTHORITY & DEPUTY COLLECTOR (ULC) & ANR.

Appearance:

Shri J.R. Nanavaty, Advocate, for the Petitioners
Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 02/07/96

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (respondent No. 1 herein) on 31st December 1985 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at

Ahmedabad (respondent No. 2 herein) on 19th January 1989 in Appeal No. Rajkot-13 of 1986 is under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 1 declared the holding of the predecessor-in-title of the petitioner (the deceased for convenience) to be in excess of the ceiling limit by 2106.83 square meters.

2. The facts giving rise to this petition move in a narrow compass. The deceased filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Rajkot. That form was duly processed by respondent No. 1. After observing necessary formalities under sec. 8 of the Act, by his order passed on 31st December 1985 but communicated on 13th January 1986 under sub-section(4) thereof, respondent No. 1 declared the holding of the deceased to be in excess of the ceiling limit by 2106.83 square meters. Its copy is at Annexure A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No. 2 under sec. 33 of the Act. It came to be registered as Appeal No. Rajkot-13 of 1986. During the pendency of the aforesaid appeal, the deceased breathed his last leaving behind him the present petitioners as his heirs and legal representatives. They were brought on record of the appellate proceedings. By the order passed on 19th January 1989 in the aforesaid appeal, respondent No. 2 dismissed it. Its copy is at Annexure B to this petition. The aggrieved petitioners have thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition.

3. As rightly submitted by Shri Nanavaty for the petitioners, the constructed property could not have been included in the holding of the deceased in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567. It transpires from the impugned order at Annexure A to this petition that one residential house situated in Laxmiwadi was included in the holding of the deceased. It could not have been done in view of the aforesaid binding ruling of the Supreme Court.

4. The main grievance voiced by learned Advocate Shri Nanavaty for the petitioners is to the effect that certain properties situated at Kotharia within the urban agglomeration of Rajkot were in partnership with one

Govindbhai Mansurbhai in equal share. The deceased had one-half share therein. These properties in entirety were included in the holding of the deceased by the authorities below. It transpires from the record that it was pointed out to the authorities below that the other partner had his one-half share in the aforesaid properties and he had made a declaration thereof in the prescribed form under sec. 6(1) of the Act and his one-half share therein was accepted while processing that declaration filed by Govind Mansur. Learned Advocate Shri Nanavaty for the petitioners produces on record one order passed by respondent No. 1 herein on 22nd June 1979 under sec. 8(4) of the Act with respect to the declaration in the prescribed form filed by said Govindbhai Mansurbhai. It is a certified copy of the order. It is kept on record of this petition.

5. It transpires from the aforesaid order taken on record that one-half share of Govindbhai Mansurbhai in Plots Nos. 112, 113 and 125 to the extent of 299.99 square meters, 300.70 square meters and 299.99 square meters was accepted. It transpires from the impugned order at Annexure A to this petition that all the aforesaid three properties in their entirety were included in the holding of the deceased. When half portion thereof was included in the holding of the partner of the deceased, the entire area of those 3 properties could not have been included in the holding of the deceased. The grievance voiced by learned Advocate Shri Nanavaty for the petitioners in that regard deserves to be redressed. The respondents ought to have taken only one-half share in the holding of the deceased with respect to plots Nos. 112, 113 and 125 situated at Kotharia within the urban agglomeration of Rajkot.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure B to this petition cannot be sustained in law. It has to be quashed and set aside. The matter will have to be remanded to respondent No. 1 for restoration of the proceedings to file and for his fresh decision according to law in the light of this judgment of mine.

7. In the result, this petition is accepted. The order passed by the Competent Authority at Rajkot (respondent No. 1 herein) on 31st December 1985 but communicated on 13th January 1986 at Annexure A to this petition as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad on 19th January 1989 in Appeal No. Rajkot-13 of 1986 at Annexure B to this

petition is quashed and set aside. The matter is remanded to respondent No. 1 for restoration of the proceedings to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
